

**Testimony of John St. Clair, Chief Judge
Shoshone and Arapahoe Tribal Court
Wind River Indian Reservation, Wyoming**

before the
Senate Indian Affairs Committee
February 27, 2002

INTRODUCTION

Good afternoon Chairman Inouye and distinguished members of the Senate Indian Affairs Committee. Thank you for the invitation to come before you today to testify about a topic that has had a major impact upon the powers and authorities of Indian tribal governments.

My name is John St. Clair. I am an enrolled member of the Eastern Shoshone Tribe of the Wind River Indian Reservation located in west central Wyoming. I am an attorney licensed in Wyoming and have been sitting as Chief Judge of the Shoshone and Arapahoe Tribal Court since 1983. I am President of Wyoming Legal Services, President of Montana-Wyoming Tribal Judges Association and a member of the Board of Directors of the National American Indian Court Judges Association (NAICJA).

The Wind River Indian Reservation is jointly owned by the Eastern Shoshone and Northern Arapahoe Tribes (the Tribes). It is approximately 3500 square miles in area inhabited by about 12,000 members of both tribes and other tribes, along with about 25,000 non-Indians.

The Shoshone and Arapahoe Tribal Court through a comprehensive Law and Order Code extends jurisdiction over all Indians who commit offenses prohibited in the Code and over all persons who have significant contacts with the reservation. The Court consists of a Chief Judge who must be a professional attorney and three Associate Judges. There is a Court of Appeals comprised of the remaining three judges who did not hear the case. Jurisdiction is limited by applicable federal law. Total case load for 2001 was approximately 3,500.

IMPACT OF RECENT SUPREME COURT DECISIONS

Recent United States Supreme Court decisions have become a major concern to the Tribes due to their intensified passion to limit the sovereignty of Indian Tribes. In particular, within the past ten (10) years tribes have lost 23 of 28 cases argued before the Court. Since the case of Oliphant vs. Suquamish Tribe, 435 U.S. 191 (1978), where the Court held by implication that tribes are without inherent jurisdiction to try non-Indians for crimes, a new doctrine has emerged that tribes lack certain powers that are inconsistent with their dependant status even when Congress has not acted to curtail those powers. This new doctrine has been extended to the civil regulatory area by Montana vs. United States, 450 U.S. 544 (1981), the adjudicatory area by States vs. A-1 Contractors, 520 U.S. 438 (1997) and in 2001, in Atkinson Trading Post vs. Shirley 531 U.S. 1009 (2001) to a hotel occupancy tax imposed by the Navajo Nation. The most recent extension of the doctrine is Nevada vs. Hicks, 121 S. Ct. 2304 (2001) where it was held that tribes lack jurisdiction over civil suits against state officials for violating the rights of Indians on Indian land within a reservation.

The impact of Oliphant and its progeny on the powers and authorities of Indian tribal governments is that it severely restricts the ability to exercise basic regulatory and adjudicatory functions when dealing with everyday activities on reservations. When both Indians and non-Indians are involved in domestic violence, alcohol and/or drug related disturbances or a other criminal activity, tribes can adjudicate only Indians while non-Indians, even when detained and turned over to state authorities, go unpunished. This double standard of justice creates resentment and projects an image that non-Indians are above the law in the area where they choose to reside or enter into.

The affect on tribes of not being able to regulate taxing, hunting and fishing, the environment, zoning, traffic, etc. placed limitations on economic development and self-sufficiency. Without the ability to generate revenues to fund basic governmental functions, tribes become more and more dependant on federal grants, contracts and compacts, as a sole source of funding. This results in an increased economic burden that ultimately falls on the federal government.

Tribal courts constitute one of the frontline institutions confronted with the issues involving sovereignty, while charged with providing reliable and equitable adjudication of increased numbers of criminal matters and complex civil litigation. Tribes and their court agonize over the same issues state and federal courts confront. Child sexual abuse, alcohol and substance abuse, gang violence, violence against women, child neglect, pollution of the air, water, and earth, are just some of these common yet complicated problems that arise on Indian reservations. The vast panarama of cases handled by the 500 plus tribes in their courts would significantly increase the caseloads of Federal District Courts and also local state courts, if tribal courts no longer existed. The increased cost to federal and state courts would also result in major budget short falls.

CONCLUSION

The recent trend of the United States Supreme Court toward judicial termination poses the greatest threat to tribes since the allotment era of the 19th Century and Congressional termination of the mid-20th Century. This trend runs counter to the proclaimed federal policy of self-determination that has reputiated the allotment and termination policies.

America's Third Sovereign, the Indian tribes, occupying Indian Country come before this distinguished body to ask that you utilize the plenary power of Congress in Indian affairs conferred upon you by the Indian Commence Clause, article 1, Section 8, clause 3, of the Untied States Constitution. We request that you restore and reaffirm the inherent regulatory and adjudicatory authority of tribes over all persons and all land within Indian Country as defined in 18 U.S.C. Sec. 1151. This approach would place the exercise of jurisdiction in the hands of the Tribes and the extent of it within their organic documents and case law making it a question of tribal law.

Again I want to thank you for this unique opportunity that you have provided on behalf of my tribes and all the Indian Tribes.